

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHERYL DORSEY, Plaintiff, v. PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY, Defendant.	CIVIL ACTION NO. 01-1072
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MEMORANDUM AND ORDER

Katz, S.J.

October 5, 2001

Plaintiff Cheryl Dorsey brings this action against Provident Life and Accident Insurance (Provident) for recovery of disability benefits under the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. § 1001 et seq. Now before the court is Plaintiff's Motion for Inclusion of Evidence in consideration of plaintiff's motion for summary judgment (doc. 15). Plaintiff moves to admit evidence not included in the administrative record, namely, three depositions of Provident employees, plaintiff's social security claim file, and excerpts from three medical journals. Plaintiff's motion is granted for the limited purpose of determining the appropriate standard of review under Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377 (3d Cir. 2000).

I. Background¹

In February 1999, the plaintiff's primary care physician diagnosed her with fibromyalgia.

¹ A more detailed background is given in the court's memorandum and order for summary judgment.

App. to Def.'s Summ. J. Mot. at PLACL00004.² Fibromyalgia is a disease characterized by diffuse musculoskeletal pain, stiffness, paresthesia, nonrestorative sleep and easy fatigability. Harrison's Principles of Internal Medicine 1706-07 (Kurt J. Isselbacher, et al., eds., 13th ed. 1994). In August, 1999, the plaintiff submitted a claim for long term disability benefits to defendant Provident Life and Accident Insurance. App. at PLACL00001-55. Provident paid interim benefits from August, 1999, to December, 1999 totaling \$18,750.00. After reviewing the plaintiff's medical information, a functional capacity evaluation, and a surveillance tape, Provident initially denied the plaintiff's claim for long-term benefits in January, 2000. App. at PLACL00280-82. The plaintiff subsequently filed an internal appeal with Provident and submitted additional medical information to support her claim. App. at PLACL00257-62 and PLACL00325-516. Following Provident's denial of the appeal, the plaintiff filed this lawsuit seeking reinstatement of her benefits and the defendant counterclaimed for the interim benefits provided. Both parties have filed motions for summary judgment which are considered by separate memorandum and order of this court.

II. Discussion

To decide the narrow evidentiary issue presented by plaintiff's motion, the court must first examine the standard of review in ERISA actions.³ Provident's benefit plan grants

² Hereinafter, the administrative record, filed with defendant's motion for summary judgment, will be cited as App. at PLACL#.

³ A fuller discussion of the standard of review under ERISA is provided in this court's memorandum and order for summary judgment.

discretion in its administrator to determine a claimant's eligibility for benefits;⁴ therefore, Provident's denial of long-term disability benefits must be reviewed under an arbitrary and capricious standard. See Firestone Tire & Rubber Company v. Bruch, 489 U.S. 101 (1989); Abnathya v. Hoffman, 2 F.3d 40 (3rd Cir. 1993). If a conflict is presented in that an insurance company both funds and determines eligibility for benefits under its plan, the Third Circuit requires a heightened arbitrary and capricious standard of review. Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 378 (3rd Cir. 2000). The Third Circuit directed district courts to utilize a "sliding scale approach, according different degrees of deference depending on the apparent seriousness of the conflict." Id. at 391. Such an approach "allows each case to be examined on its facts." Id. at 392. Under Pinto, a district court must weigh the "nature and degree of apparent conflicts" in order to determine how much deference to give an administrator's decision to deny benefits. Id. at 393. Therefore, a district court must first determine how much deference to afford an insurance company's denial of benefits before reviewing the decision itself. Since Provident both funds and administers its long term disability plan,⁵ this court must conduct the two-step Pinto analysis in examining Provident's decision to deny Ms. Dorsey's claim.

The Third Circuit has stated that when reviewing an insurance company's decision under the arbitrary and capricious standard, a court is limited to "that evidence that was before the administrator when [it] made the decision being reviewed." Mitchell v. Eastman Kodak Co., 113

⁴ "[T]here is no dispute that Provident had discretionary authority to determine eligibility for disability benefits." Pl.'s Mem. in Support of Summ. J. at 14.

⁵ Defendant concedes that it both funds and determines eligibility for benefits under Ms. Dorsey's group insurance plan. Def.'s Mem. in Support of Summ. J. Mot. at 10.

F.3d 433 (3rd Cir. 1997). However, Pinto's sliding scale analysis requires a more searching inquiry. When determining an insurance company's level of conflict, district courts must weigh the sophistication of the parties, the current financial relationship between the employer and insurance company, the information accessible to the parties, as well as the insurance company's claims process. Pinto, 214 F.3d at 392-93. Therefore, a district court may be forced to examine evidence outside the administrative record in order to determine the amount of deference to afford an administrator's decision. Pinto, 214 F.3d at 395.

The defendant argues that a court may not consider, in any instance, evidence beyond the record that was before the claims administrator at the time of the benefit determination. Def.'s Resp. to Pl.'s Mot. For Incl. of Evidence at 2. The defendant cites numerous district court cases within the Third Circuit that purportedly support this contention. O'Sullivan v. Metropolitan Life Ins. Co., 114 F. Supp. 2d 303 (D. N.J. 2000), Russel, III v. Paul Revere Life Insurance Company, 148 F. Supp. 2d 392 (D. Del. 2001), Oslowski v. Life Ins. Co. of North America, 139 F. Supp. 2d 668 (W.D. Pa. 2001), Cimino v. Reliance Standard Life Ins. Co., 2001 U.S. Dist. LEXIS 2643 (E.D. Pa. 2001), Ernest v. Textron Insured Benefits Plan, 124 F. Supp. 2d 884, 893 (M.D. PA. 2000). The defendant is correct that these courts did limit themselves to the administrative record when applying the arbitrary and capricious standard. However, only in Russell and Oslowski did the courts explicitly limit the review to the administrative record when determining *whether* to apply a less deferential arbitrary and capricious standard. 148 F. Supp.2d at 403. In contrast, another court in this district permitted additional discovery as to an administrator's conflict of interest. Friess v. Reliance Standard Ins. Co., 122 F. Supp. 2d 566 (E.D. Pa. 2000). Most informative is the Third Circuit's instruction to the district court in Pinto.

On remand, the Third Circuit stated that the district court, “*may* take evidence regarding the [administrator’s] conflict of interest, and ways in which the conflict may have influenced the decision” Pinto, 214 at 395 (emphasis added). While a court may not look outside the administrative record when reviewing an administrator’s decision, a court may consider evidence outside the record when evaluating the level of an administrator’s conflict of interest and the appropriate standard of review.

III. Conclusion

For the forgoing reasons, plaintiff’s motion for inclusion of evidence is granted for the limited purpose of determining whether to apply a heightened arbitrary and capricious standard of review to Provident’s decision to deny the plaintiff’s benefits.

An appropriate order follows.

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ORDER

AND NOW, this 5th day of October, 2001, upon consideration of Plaintiff's Motion for Inclusion of Evidence and the response thereto, is it hereby **ORDERED** that plaintiff's motion is **GRANTED** for the limited purpose of determining the appropriate standard of review under Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377 (3d Cir. 2000).

BY THE COURT:

MARVIN KATZ, S.J.